

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,376

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Appeal of)

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INTRODUCTION

The petitioner appeals a Medicaid Disability Eligibility Decision denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. Petitioner is a forty-four-year-old woman who has limited education (completed 8th grade). To date she has attempted two times to obtain a GED but has been unsuccessful in that regard.
2. Petitioner was last employed in 1982 and had to leave that job (janitor's helper) as a result of inability to carry pails and do other heavy lifting.
3. The vocational assessment and Medicaid eligibility decision found that the petitioner has "no past relevant work as all work activity was either performed for too short a period to meet the definition of customary work or was performed in a supervised work training program."
4. Petitioner was diagnosed as having "presumed ischemic heart disease with angina" in July 1993 as a result of chest pain in a hospital visit. Petitioner still takes nitro-glycerine when she feels the need although this is not a constant every day concern.
5. Petitioner also has high cholesterol and high blood pressure problems.
6. Petitioner experiences chest pain, shortness of breath and tightness in her chest as a result of her heart condition and this can be brought on by exertion or by anxiety.
7. Petitioner has been seen for "nervousness" in some counseling sessions. There is no clinical evidence of any psychological concerns.
8. Most of petitioner's anxiety relates to being in large groups of people as well as fear about her health. Petitioner is fearful of physical activity and also afraid to use her arms in any significant manner.

9. Petitioner has been seen for pain in her upper back and shoulders as well as an additional back problem. Petitioner has sought physical therapy for these items. Petitioner experiences pain in her upper back and shoulders on a fairly regular basis and any time that side-to-side reaching is involved or when she is working with her hands or arms for more than an hour at a time.

10. The petitioner is being treated with several medications. They are Procardia for her angina, Atenolol to slow her heart rate down, Tenex for high blood pressure, Pravachol for hyperlipidemia, and nitroglycerine as need for angina related pain. She also takes Tylenol for her upper back and shoulder pain.

11. The petitioner testified credibly in her own behalf. On the basis of this testimony it is found that as a result of petitioner's various physical and mental concerns, she experiences significant limitations in her daily activities. She is able to do a few household chores but receives help from her husband in doing the more physically demanding chores. She is able to take walks, but has difficulty climbing stairs without being winded or getting tired. She only carries light bags when doing grocery shopping and schedules her shopping trips for times when she expects that there will be a small number of people at the grocery store.

12. Petitioner's treating physician on 12/3/93 wrote that "patient has angina and hyperlipidemia and should be in a home close to a hospital. She cannot work because of her heart condition and her also chronic back pain."

13. Examination of 2/27/96 by another physician confirmed the existing heart problems and pain in the arm and neck areas. That physician's impression was that petitioner had a significant source of disability affecting her ability to perform physically strenuous work especially involving use of her arms and going up steps. The physician did opine that he thought the petitioner was suited for sedentary work.

14. There is no evidence in the past employment history which indicates the ability of the petitioner to perform non-arduous sedentary labor. Petitioner, however, is currently doing piece work through vocational rehabilitation at her home in the amount of approximately four hours per day. According to the testimony of the petitioner even this work which involves reaching and grabbing and putting together stove handles provides her with some pain and discomfort after about an hour of activity. The work that petitioner does pays her approximately nine cents a piece for a total average paycheck of \$60.00 every two weeks.

15. Petitioner has not had any of the "gold standard tests" for diagnosing coronary artery disease.

ORDER

The decision of the Department is reversed.

REASONS

To determine whether or not the petitioner has a disability we look to her inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairments or combination of impairments which can be expected to result in death or can be expected to last for a continuous period of not fewer than twelve months. Medicaid Manual, Section M 211.2:

To meet this definition the applicant must have a severe impairment, which makes him or her unable to do his or her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual capacity, age, education and work experience is considered. Id.

Both the petitioner and the Department recognize that there is a five step process that is utilized to determine whether the statutory definition of disability has been met. See 20 C.F.R. § 416.920.

The first step is to determine whether the petitioner is working at a level considered substantial gainful activity. The second step is to determine whether the petitioner has a severe impairment. The third step requires a determination whether the petitioner has a severe impairment which meets or equals the listings. Step four requires a determination as to whether the petitioner's impairment prevents her from performing past relevant work. And the last step requires a determination of whether the petitioner can perform other work.

Step One

While petitioner is currently engaged in twenty hours per week of vocational rehabilitation training under no circumstances can this be considered substantial gainful activity. Petitioner only receives sixty dollars per two week time period. The requirements for showing substantial gainful activity are more than five hundred dollars per month.

Step Two

The petitioner's treating doctors have determined that she has a disability which had been confirmed as angina pectoris in addition to her high blood pressure and her high cholesterol. Petitioner also experiences pain in her upper back shoulders, the combination of which does meet the definition of severe impairment. The petitioner has not had any substantial work activity since 1982. Therefore she meets the durational requirements as well.

Step Three

The petitioner makes no request regarding step three and petitioner's severe impairments do not meet or equal the listing.

Step Four

When an individual's impairment does not meet or equal a listing as in petitioner's case a determination needs to be made as to whether that individual can perform his or her past relevant work. There is no doubt that the petitioner cannot perform any past relevant work for which she has a history. She was last employed in 1982 and had to leave that job as a janitor's helper as a result of her inability to carry pails and do other heavy lifting. It also should be pointed out that according to the vocational assessment that was done in this case the petitioner has "no past relevant work as all work activity was either performed for too short a period of time to meet the definition of customary work or was performed in a supervised work training program."

Step Five

Both parties acknowledge that once the determination has proceeded past Step Four the burden of proof shifts to the state to show at the Fifth Step that there is other substantial gainful employment that the petitioner can perform. This determination is based upon age, education and past work experience. The Department contends that the fact that the petitioner is successfully performing work through the Industrial Home Work Program indicates that she has the necessary skills and abilities to perform other work at the substantial gainful activity level. The credible testimony by the petitioner, however, indicates that even this level of employment causes her pain in her arms and requires her to take breaks at fairly regular intervals from this employment. It is doubtful that this kind of employment would ever reach the level of substantial gainful activity. The Department relies on a listing of types of work that would fall within the "sedentary" definition. This reliance is supported by the examining physician's impression of 2/27/96 that petitioner was suited for sedentary work. The reliance upon this physician's analysis and the job listing analysis predates the petitioner's current work experience and her testimony regarding her need to take significant breaks and the effect that the current work has on her upper arms and back problems. Given the current state of affairs and the above described defects, limited education, and advancing age, it is not possible to conclude from the evidence at hand that the petitioner was able to perform a full range of sedentary work at any time since January of 1996 and certainly for a period of time before then. Therefore, the petitioner must be found disabled.

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